

**REMARKS**

Claims 1 to 20 are now pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Claims 15 to 20 were rejected under 35 U.S.C. § 101 as assertedly being directed to non-statutory subject matter. As an initial matter, claims 19 and 20 depend from claims 1 and 11, respectively, and therefore should not have been included in this rejection. As regards claims 15 to 18, claims 15 to 18 have been amended herein without prejudice to obviate the present rejection. Approval and entry are respectfully requested.

Withdrawal of the rejections of claims 15 to 20 under 35 U.S.C. § 101 is therefore respectfully requested.

Claims 1 to 20 were rejected under 35 U.S.C. § 103(a) as obvious over the combination of U.S. Patent No. 5,706,278 (the "Robillard" reference) and that which the Office Action refers to as "Applicants Admitted Prior Art (AAPA)." Without addressing or agreeing with this characterization of any of Applicants' disclosure as constituting an admission of prior art, it is respectfully submitted, for the purposes of this response, that the combination of the "Robillard" reference and AAPA does not render unpatentable any of the present claims for at least the following reasons.

As regards the obviousness rejections of the claims, to reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 1 relates to a method of exchanging data between at least two users that are interconnected over a bus system. Claim 1 as presented provides for transmitting the data as event-oriented data as long as a preselectable latency is ensured for each message to be transmitted, and "if, and conditional upon that, the preselectable latency . . . is not ensured

for each message to be transmitted, transmitting the data . . . according to a deterministic operation.” Claims 11, 12, and 15 include subject matter like that of claim 1.

As explained in Applicants’ Response, dated March 13, 2006, and as the Office Action admits, while the “Robillard” reference may refer to a combination of a time-slot allocation protocol (referred to by the Final Office Action as assertedly disclosing the deterministic operation) and a contention-based protocol (referred to by the Office Action as assertedly disclosing the transmission of data as event-oriented data), any review of the “Robillard” reference makes plain that the time-slot allocation protocol is used for all transmissions. It is not used “conditional upon that” a preselectable latency is not ensured. In this regard, the “Robillard” reference states that a plurality of time slots are generated in which all messages are transmitted. For each node that transmits critical messages, one or more time slots are assigned to the node for transmitting the critical messages. An additional time slot is provided that is not assigned to any particular node, and during which non-critical messages of all nodes are transmitted. (Column 3, lines 36 to 62.)

Thus, the time-slot allocation protocol is used for all data transmissions, and the use of the time-slot allocation protocol is not conditional upon that a preselectable latency is not ensured. Further, the contention-based protocol (referred to by the Office Action as assertedly disclosing the transmission of data as event-oriented data) is not used in the “Robillard” reference for “as long as a preselectable latency is ensured for each message to be transmitted,” as provided for in the context of claim 1. Instead, the contention-based protocol is used in the “Robillard” reference only in a predetermined time slot. As soon as the time-slot has passed, the contention-based protocol is terminated, even if a preselectable latency is ensured for each message to be transmitted.

The Office Action asserts that AAPA, in particular Applicants’ Specification, page 3, line 28 to page 4, line 3, corrects these deficiencies of the “Robillard” reference because it “discloses utilizing deterministic operation in an event-oriented communication system.” Office Action, page 4. However, at issue is not a deficiency in the “Robillard” reference in a failure to disclose a combination of deterministic operation with an event-oriented communication system. Instead, at issue are the critical deficiencies of the “Robillard” reference in the failure to disclose such a combination where data is transmitted as event-oriented data as a function of a capacity utilization of a bus system for as long as a preselectable latency is ensured for each message to be transmitted and where the data is transmitted according to the deterministic operation conditional upon that the preselectable

latency is not ensured. The Office Action does not address these deficiencies in the “Robillard” reference, which are admitted to by the Office Action.

Indeed, it is respectfully submitted that AAPA does not correct these deficiencies of the “Robillard” reference. The cited section of AAPA, similar to the “Robillard” reference, provides for a time-controlled protocol that includes one time slot in which messages may be transmitted on an event-controlled basis. Thus, the cited section of AAPA provides for a time-slot allocation protocol regardless of whether or not a preselectable latency is ensured. That is, the time-slot allocation of the cited section of AAPA is not used “conditional upon that” a preselectable latency is not ensured. Further, similar to the “Robillard” reference, the cited section of AAPA provides for termination of the event-controlled protocol as soon as an allotted time slot has passed. That is, the event-controlled protocol is not used “as long as a preselectable latency is ensured for each message to be transmitted.” Accordingly, even if the “Robillard” reference is modified to include features of AAPA, the resulting system does not disclose or suggest all of the features recited in any of claims 1, 11, 12, and 15.

Thus, the combination of the “Robillard” reference and AAPA does not disclose or even suggest all of the features recited in any of claims 1, 11, 12, and 15 as presented, so that these claims are allowable.

Claims 2 to 10, and 19 ultimately depend from claim 1 and are therefore allowable for the same reasons as claim 1. Claim 20 depends from claim 11 and is therefore allowable for the same reasons as claim 11. Claims 13 and 14 depend from claim 12 and are therefore allowable for the same reasons as claim 12. Claims 16 to 18 ultimately depend from claim 15 and are therefore allowable for the same reasons as claim 15.

It is therefore respectfully requested that the obviousness rejections of claims 1 to 20 be withdrawn.

Accordingly, claims 1 to 20 are allowable.

**Conclusion**

In view of the foregoing, it is respectfully submitted that all of claims 1 to 20 are allowable. It is therefore respectfully requested that the rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

Dated: \_\_\_\_\_

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By: \_\_\_\_\_

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